

FILED

JAN - 9 2004

JAMES BONINI, Clerk
CINCINNATI, OHIO

2:55 P.M.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, CINCINNATI**

EVERETT W. WHISMAN, et al.

Plaintiffs,

-VS-

ZF BATAVIA, LLC, et al.

Defendants.

Case No. C01-02-406

**Judge Beckwith
Magistrate Sherman**

AFFIDAVIT OF RICHARD NEWARK

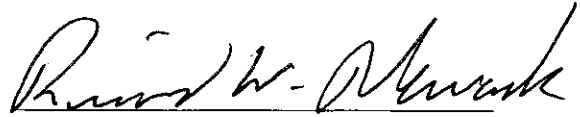
John J. Hunter, Jr. (0034602)
HUNTER & SCHANK CO., LPA
One Canton Square
1700 Canton Avenue
Toledo, OH 43624
(419) 255-4300
(419) 255-9121 Fax
jrhunter@hunterschank.com

NOW COMES Richard Newark and being first duly sworn, states, deposes and avers as follows:

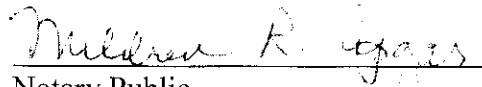
1. That I have personal knowledge of all matters attested to herein.
2. That I am the Plant Manager for ZF Batavia, LLC.
3. That I have responsibility for the day-to-day manufacturing functions of ZF Batavia LLC for the CD4E line.
4. That I do not have and have never had direct responsibility for payroll or pay practices at ZF Batavia LLC.
5. That in my deposition when I indicated that a salaried employee could be paid less than full salary I did not fully think through the question in terms of our exempt employees.

6. That my statement that we would dock a salaried employee was incorrect if the reference by Mr. Simon was to salaried exempt employees.
7. I do believe that if an hourly employee did not work eight hours that such employee would not be paid for eight hours.
8. As to salaried exempt employees I do understand that ZF Batavia LLC has always paid its exempt employees their full salary without regard to any time keeping issues.
9. That in the course of this litigation I have become aware that we have never docked an exempt employee's salary for time discrepancies nor do we have any policy that would permit docking of base pay for time discrepancies.

Further, affiant sayeth naught.


Richard Newark

Sworn to before me and subscribed in my presence this 8th day of January,
2004.


Notary Public

jr/whisman.newark.affidavit.doc

MILDRED R. APGAR
Notary Public, State of Ohio
My Commission Expires Feb. 20, 2007